

# 10★Eight

In Service for Arkansas Law Enforcement



Volume 11, Number 2

August 2003

Dear Ten-Eight Reader:

On September 10, 2003, I will host the first Attorney General's Office statewide law-enforcement training conference, which my office is coordinating with the National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention.



The conference will take place in Little Rock and will focus on Internet crimes against children, child sexual exploitation, and parental abductions. I hope that you will take advantage of the opportunity to attend this very worthwhile training session.

As part of the conference, I will recognize and honor some of the law-enforcement officers in our state who have shown extraordinary valor in the line of duty.

Registration details can be found on page six of this issue of Ten-Eight. If you have additional questions about the training, please contact my staff in the Community Relations Division at 1-800-448-3014 or (501) 682-1020. I hope you enjoy this issue of Ten-Eight, and I look forward to seeing you in September.

Sincerely,

Mike Beebe



## HELPER'S HIGHLIGHT

In this issue, we proudly recognize Officer Kenny A. Stephens, Jr. for his many notable contributions to the citizens of North Little Rock. Officer Stephens joined the North Little Rock Police Department (NLRPD) in 1998.

Currently, he is a full-time student at the University of Arkansas at Conway, as well as the executive director of North Little Rock's Police Athletic League (PAL), a nationwide organization of law-enforcement agencies formed to prevent juvenile crime and violence. This program relies heavily on athletics, recreational activities, and education to help kids stay out of trouble. Their motto in Arkansas is: "Filling ball

courts, not judicial courts." The NLR chapter is the only one in the state.

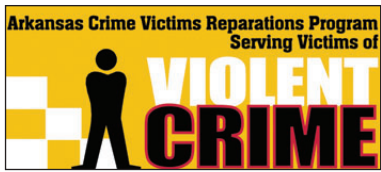
Since 1999, Officer Stephens has logged over 500 hours of community volunteer time. His activities include organizing the NLRPD's annual Toys for Tots Drive and participating annually in the Special Olympics Torch Run. Officer Stephens is a Little Rock native, who attributes his success to his wife, Heidi, and his parents for their loving support and inspiration.

"I love trying to make a difference in the lives of North Little Rock's youth," Stephens said. "I am honored to represent Chief Danny Bradley and Mayor Patrick Hays in

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## Financial Help for Victims of Violent Crime

**Mica Strother**

*Assistant Attorney General*

The Arkansas Crime Victims Reparations program was created to provide a method of compensating and assisting victims and their dependents who have suffered personal injury or death as the result of a violent crime, including DWI. Economic losses covered under the program include medical care, counseling, rehabilitation, work-loss, and funeral expenses.

Assistance is available to any individual (or family member of an individual) who suffers injury or death as a result of a criminal act that is punishable by a fine, imprisonment, or death and is committed in Arkansas. Assistance is also available to Arkansas residents victimized in another state that has no compensation program or those who are victimized during an act of terrorism committed outside the United States.

Those eligible for assistance include the following:

- A victim of violent crime;
- The dependent or child of a victim;
- A person authorized to act on behalf of a victim or dependent;
- The spouse, parent, child, sibling, or grandparent of certain victims, i.e. deceased victims, child victims, or victims of sexual assault;
- Non-immediate family members of a victim who resided in the same permanent household as a deceased victim at the time of the crime;
- Individuals who discover the body of a homicide victim.

It is not necessary for a claimant to prove financial need in order to be eligible for compensation, nor must there be an arrest or conviction before compensation is paid.

Claim forms may be obtained from the Attorney General's Office and are available on our Web site at [www.ag.state.ar.us](http://www.ag.state.ar.us). Victim-service organizations also have applications and may be able to provide assistance in completing the application.

Additional information about the program is available by contacting the Attorney General's Office at 1-800-448-3014.



## The Arkansas Anti-Terrorism Act of 2003

**Jeff R. Priebe**

*Assistant Attorney General*

On April 14, 2003, House Bill 2614 became Act 1342 of 2003 and became part of the Arkansas Criminal Code. Act 1342 was based on legislation enacted in other states and was adopted to update the Arkansas criminal code in order to address acts of terrorism after September 11, 2001.

This Act creates a new chapter in the Arkansas Criminal Code, title 5, chapter 54, to address "terrorism," and not only defines what would be classified as an act of terrorism, but also states that a person commits an offense of terrorism when an act is committed "with the intent to intimidate or coerce a civilian population, influence the policy of a unit of government using intimidation or coercion, affect the conduct of a unit or level of government by intimidation or coercion, or retaliate against a civilian population or unit of government for a policy or conduct . . . ."

This chapter also includes new criminal offenses titled: "Soliciting Material Support for Terrorism - Providing Material Support for a Terrorist Act;" "Making a Terrorist Threat;" "Falsely Making a Terrorist Threat;" "Terrorism;" "Hindering Prosecution of Terrorism;" "Exposing the Public to Toxic Biological, Chemical, or Radioactive Substances;" and "Use of a Hoax Substance."

The Act also amends existing law. It adds the new offense of "terrorism" to the list of offenses included under the definition of "capital murder" and provides for the enhancement of penalties for an offense of terrorism "if the person's acts caused serious physical injury to a law-enforcement officer, fire fighter, or emergency-service technician providing emergency assistance at the scene of the act of terrorism."

The Act also amends the existing definition of the criminal offense of "Causing a Catastrophe - Threatening to Cause a Catastrophe," Arkansas Code Annotated § 5-38-202, and amends the penalties for this criminal offense to allow a court to order a person convicted of this offense to make restitution to the State for clean-up costs. This Act also enhances the penalties prescribed for the criminal offense of "Communicating a False Alarm," Arkansas Code Annotated § 5-71-210.

# CRIMINAL LAW LEGISLATIVE UPDATE

Legislation related to criminal law was enacted during the regular session of the 84th General Assembly. Each law is summarized below. The full text of each Act may be found on the Arkansas General Assembly's Web site at [www.arkleg.state.ar.us](http://www.arkleg.state.ar.us).

**Act 509...** Requires law-enforcement officers to complete a minimum of 20 hours of sexual-assault training as a part of the Basic Police Training Course curriculum.

**Act 607...** Makes it a class C felony to perform or participate in human cloning.

**Act 750...** Makes the sale and use of urine, with the intent to defraud a drug- or alcohol- screening test, a class B misdemeanor.

**Act 836...** Amends A.C.A. § 27-16-701(c) to prohibit the use of a Social Security Number as a driver's license number.

**Act 838...** Amends A.C.A. §§ 5-36-103, -105, and -106 to include theft of a debit card or debit-card account number in the definitions of "theft", "theft of lost or mislaid property", and "theft by receiving."

**Act 930...** Makes it a class B felony for an adult, with the intent to manufacture methamphetamine, to knowingly cause or permit a child to be exposed to, ingest, inhale, or have contact with a chemical substance or methamphetamine.

**Act 944...** Enhances the penalties for first-, second-, and third-degree domestic battering by one penalty-classification level when a defendant commits the crime against a woman that he or she knew, or should have known, was pregnant.

**Act 950...** Amends A.C.A. § 5-65-208(a) to provide that the driver of a motor vehicle involved in an accident resulting in the loss of human life, or when there is reason to believe that a death may result from the accident, shall be tested to determine the presence of alcohol and drugs.

**Act 1019...** Requires that all commercial e-mails ("spam") contain the sender's legal name, address, and a valid Internet domain name. In addition, all spam that contains material that is "harmful to minors" must have in the subject line "ADV: ADULT."

**Act 1087...** Addresses computer crime. Provides that an Internet service provider (ISP) shall disclose personal information about subscribers pursuant to a subpoena, warrant, or court order issued under the authority of the State, another state, or the U.S. government. Provides that, consistent with federal law, the issuance of a court order for the disclosure of customer communications or records or for the installation and use of pen registers or trap-and-trace devices is not prohibited by Arkansas law.

**Act 1110...** Amends A.C.A. § 5-73-306(a) to allow a person to carry a concealed handgun into a restaurant or public park.

**Act 1113...** Exempts law-enforcement officers acting within the scope of their duties from the provisions of A.C.A. § 5-13-204, the aggravated-assault statute.

**Act 1187...** Creates a new section, A.C.A. § 14-2-204, to prescribe time periods for maintaining various municipal police-department records.

**Act 1207...** Prohibits all law-enforcement officers in Arkansas from engaging in racial profiling. All law-enforcement agencies are required to adopt a written policy on racial profiling by January 1, 2004.

**Act 1221...** Amends A.C.A. § 9-15-201(d) to make the law more flexible concerning persons authorized to file petitions for orders of protection.

**Act 1265...** Provides for the assessment and registration of juvenile sex offenders. Provides that juveniles who are adjudicated delinquent for rape, first- and second-degree sexual assault, incest, capital murder, first- and second-degree murder, kidnapping, aggravated robbery, or terroristic act shall have a DNA sample drawn.

**Act 1266...** Authorizes each judicial district of the State to establish a drug-court program.

**Act 1318...** Amends A.C.A. § 5-27-221 to change the offense of "permitting abuse of a child" (defined as a person less than 11-years-old) to "permitting abuse of a minor" (defined as a person under the age of 18).

**Act 1342...** The Arkansas Anti-Terrorism Act of 2003. Creates the new offenses of terrorism; soliciting material support of terrorism/providing material support for a terrorist act; making a terrorist threat; falsely making a terrorist threat; hindering prosecution of terrorism; exposing the public to a toxic biological, chemical, or radioactive substance; and use of a hoax substance.

**Act 1461...** Amends A.C.A. § 5-65-111 to provide enhanced penalties for persons convicted of DWI when a person under the age of 16 was a passenger in the vehicle at the time of the offense.

**Act 1470...** Provides that a person, who is adjudicated guilty for a "qualifying offense," shall provide a DNA sample to the State Convicted Offender Database. A "qualifying offense" is any felony offense as defined in the Arkansas Criminal Code, a sexual offense classified as a misdemeanor in the Criminal Code, or a repeat offense.





# Pretextual Arrests

**Clayton Hodges**  
Assistant Attorney General

Last year, the Arkansas Supreme Court, in *State v. Sullivan*, held that pretextual arrests---arrests that would not have occurred but for some motivation on the part of the law-enforcement officer making the arrest apart from the reason for the arrest, such as to conduct a search for drugs incidental to the arrest---violate Article 2, § 15 of the Arkansas Constitution. This term, the Court was presented with the question of whether the ruling in *Sullivan* applies to pretextual traffic stops in *State v. Harmon*. In that case, a narcotics officer saw Harmon drive up to a house where drug activity was suspected to be occurring. Harmon went inside the house for five minutes, left, and drove away. The officer followed and noticed that one of Harmon's taillights was out. He followed Harmon to a convenience store, where Harmon pulled into the parking lot. The officer, who was driving an unmarked car and dressed in plain clothes, identified himself as a police officer and verbally warned Harmon for the taillight. He also requested Harmon's permission to search his person, which Harmon granted. Drugs were found during the search.

During a hearing on Harmon's motion to suppress, the officer admitted that, if he had not suspected Harmon of having engaged in illegal activity, he would

not have stopped him merely for having a taillight out. The trial court granted the motion to suppress, ruling that the officer's actions were prohibited by *Sullivan*. The State appealed, and the Arkansas Supreme Court reversed the order of suppression and remanded for trial. It noted that *Sullivan* held that the intrusiveness of a full-

scale arrest warranted heightened inquiry into the motives of law-enforcement officers, but in cases in which a full-scale arrest does not occur as a result of a traffic stop, such an inquiry is not warranted. Significantly, the fact that the officer had a pretextual reason for conducting the traffic stop did not invalidate Harmon's subsequent arrest for possessing drugs.

*Harmon*, therefore, holds that an officer may make a pretextual traffic stop-- that is, one made with a motive other than the violation for which the stop is

made--- as long as the person is not arrested for that pretextual reason. In this case, in which Harmon consented to a search of his person after the stop, despite the fact that the officer admitted that the reason he stopped him was, in part, because he believed he had committed a drug violation, no violation of the Arkansas Constitution occurred, and the Court concluded that the evidence should be admissible at trial.

***“Significantly, the fact that the officer had a pretextual reason for conducting the traffic stop did not invalidate Harmon’s subsequent arrest for possessing drugs.”***

## OPINIONS OF THE ATTORNEY GENERAL

**Opinion Number 2003-083:** Does Arkansas law or court precedent specifically preclude using state licensed and/or approved truth-verification systems (lie detector, voice stress, etc.) for municipal administrative investigations of employees? Can the findings from state licensed/approved truth-verification systems be used in formulating an administrative decision (suspension or termination) as to truth or deception specifically related to the issue being investigated?

**Response:** As long as a public employer makes clear that the results of the truth-verification test will not later be used in a criminal prosecution, it may rely on such tests as a basis for suspending or terminating an employee. If the employee were situated to challenge the supervisor's decision before a civil service commission,

I believe the commission might well disregard or disallow the truth-verification evidence in determining whether to uphold the supervisor's action.

**Opinion Number 2003-150:** Does a municipal police-enforcement officer employed by the City of Lake Village have jurisdiction to enforce traffic violations on a state highway that has to be traveled to and from an area that has been annexed into the city limits?

**Response:** The officer will have jurisdiction to patrol on a state highway if, and only if, the area patrolled is within the city's limits. However, municipal police may not patrol limited access highways unless authorized to do so by the Director of the Arkansas State Police.



# Swabbing May Be Valuable in Cases Where Oral Sex Is Alleged

## Guest Columnist



**John Threet**  
Chief Deputy Prosecutor,  
Washington County

On April 12, 2002, a Fayetteville police dispatcher received an open-line 911 call from an apartment in Fayetteville. Two female voices and one male voice could be heard on the call. The male voice sounded agitated, and the female voices sounded terrified.

Officer Rick Logue, the first officer to arrive on the scene, discovered James Moore in the apartment with two females. The females told Officer Logue that they did not know Moore, and Moore claimed that the females and another male had stolen money from him. Initially Moore was arrested on a burglary charge and taken to the police department. The two females stated that Moore had forced his way into their apartment, and by threat and physical strength, forced them to perform oral sex. The females were taken to the hospital where they were given rape kits and submitted DNA samples.

Detective Tim Franklin interviewed Moore, who never wavered from his story that the females had stolen his money. Moore adamantly denied any sexual contact with the females and was very confident that he would be cleared of a rape charge. Moore had submitted DNA samples in the past and was, therefore, familiar with DNA testing. On several occasions during the interview, Moore asked that Detective Franklin take the DNA sample.

Detective Franklin was aware that because the females claimed that Moore didn't ejaculate, DNA evidence would likely not be available, and the case would rest entirely on the testimony of the females. Detective Franklin was also aware that it had been approximately 12 hours since the time of the rape, but the DNA samples were collected nonetheless.

Detective Franklin asked Moore if he would submit to DNA testing through swabbing of his genitals. Moore readily agreed and signed a consent form for the swab test and other DNA samples. The nurse took two separate swabs of Moore's penis in the presence of Detective Franklin.

Detective Franklin submitted all of the DNA samples to the state crime lab. Terry Rolf of the crime lab later notified the Washington County Prosecutor's Office that there was a DNA match to one of the females on both swabs from the defendant.

One swab showed only a one-in-nine-thousand chance of the DNA not being the victim's, but the other swab revealed a one-in-one billion probability that the DNA did not belong to the victim. Thus, there were overwhelmingly high odds that one of the females' saliva was still on the suspect's penis 12 hours later.

Due to the work of Detective Franklin, as well as others, James Moore was given four consecutive life sentences for the kidnapping and rape of the two females and 25 years to be served consecutively for residential burglary.

*"...there was a DNA match to one of the females on both swabs from the defendant."*

## HELPER'S HIGHLIGHT

(Continued from Page 4)

developing these programs to deter crime."

We also salute Officer Steve Nail for his outstanding service to young people in North Little Rock. Nail has been an NLRPD officer for more than eight years. For three years, he has volunteered his services all year long to culturally diverse youth in various North Little Rock com-

munities. Currently, he encourages and motivates young athletes to be active in the PAL program as he joins them to play basketball, ping-pong, kick ball, and other sports.

Officer Nail also hosts a unique summer program that includes a weekly trip to the Burns Park Golf Course, where young people receive expert instruction from local golf pros.

Burns Park golfers have donated a set of golf clubs to each participant. "I even like to just give hugs," Nail stated. "A lot of the kids just need attention and affirmation. They kind of make me feel young again. I wish a lot more people would donate their time to love these and other kids."

The "Helper's High" is a phrase coined by the executive director of Big

Brothers/Big Sisters to refer to feelings of euphoria generally experienced by volunteers. If you know an officer who volunteers time to improve the lives of Arkansans, please contact Alicia Banks in the Community Relations Division of Attorney General Mike Beebe's office at 1-800-448-3014 or 501-682-3646.



# 2003 LAW-ENFORCEMENT SUMMIT

*Hosted by Attorney General Mike Beebe*

Attorney General Mike Beebe is hosting a one-day, statewide Law-Enforcement Summit on Wednesday, September 10, 2003. The conference will be held at the Clear Channel Metroplex Event Center, located at 10800 Colonel Glenn Road in Little Rock. Its focus will be on crimes against children, with special emphasis on Internet crimes and child sexual exploitation. As part of the conference, Attorney General Beebe will present awards honoring law-enforcement officers who have shown extraordinary valor in the line of duty.

Registration for the conference is open to law-enforcement officials, prosecuting attorneys, and criminal-justice personnel. The registration fee is \$20 per person. Training materials, lunch, and morning refreshments are included in the fee. Registration will begin at 8:00 a.m., and the summit will conclude at 4:30 p.m.

The training will be conducted by nationally recognized consultants for the Office for Juvenile Justice and Delinquency Prevention and the National Center for Missing and Exploited Children. Topics include: Internet Crimes against Children; Child Sexual Exploitation; and Family Abductions. Course credit has been applied for through the Arkansas Law-Enforcement Training Academy and the Arkansas Bar Association. For more information, go to [www.ag.state.ar.us](http://www.ag.state.ar.us).

REGISTRATION FORM

Name and Rank \_\_\_\_\_  
Agency \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_  
Phone/ Fax/ E-mail \_\_\_\_\_

Registration Fee - \$20

Registration Deadline  
Thursday, August 21, 2003

Make checks payable to  
Office of the Attorney General

Send form and registration fee to:  
Office of Attorney General Mike Beebe  
Attention: Carol Robinson  
323 Center Street, Suite 1100  
Little Rock, AR 72201

Phone: 1-800-448-3014 • (501) 682-1020 • Fax: (501) 682-6704



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